



January 30, 2009

SENATE BILL No. 451

DIGEST OF SB 451 (Updated January 29, 2009 11:41 am - DI 103)

Citations Affected: IC 4-13.6; IC 36-1.

Synopsis: Government contracts. Provides that the maximum term of a guaranteed energy cost savings contract or a utility efficiency program is 20 years. (Current law provides for maximum terms of ten and 15 years.) Amends the statute governing local public works projects to state that a political subdivision or its agencies may: (1) participate in a utility efficiency program or may enter into a guaranteed savings contract as provided by law; and (2) enter into a design-build contract as permitted by law instead of awarding a public works contract. Provides that a "conservation measure" includes installation of insulation in a political subdivision's facility. (Under current law, the definition of "conservation measure" includes only insulation of school facilities.)

Effective: July 1, 2009.

**Lawson C, Merritt, Deig,
Charbonneau**

January 14, 2009, read first time and referred to Committee on Utilities & Technology.
January 29, 2009, amended, reported favorably — Do Pass.

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SB 451—LS 7541/DI 73+



January 30, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 451

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-13.6-8-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) After reviewing
3 the proposals submitted and after receiving a recommendation from the
4 budget committee, the department may approve an energy cost savings
5 contract with a qualified provider that best meets the needs of the
6 governmental body if the department reasonably expects the cost of the
7 qualified energy savings project recommended in the proposal would
8 not exceed the amount to be saved in:
9 (1) energy costs;
10 (2) operational costs; or
11 (3) both energy and operational costs;
12 not later than ~~ten (10)~~ **twenty (20)** years after the date installation is
13 completed if the recommendations in the proposal are followed.
14 (b) An energy cost savings contract must include a guarantee from
15 the qualified provider to the state that:
16 (1) energy cost savings;
17 (2) operational cost savings; or

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(3) both energy and operational cost savings;
will meet or exceed the cost of the qualified energy project not later than ~~ten (10)~~ **twenty (20)** years after the date installation is completed.

SECTION 2. IC 36-1-12-1, AS AMENDED BY P.L.168-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in this section, this chapter applies to all public work performed or contracted for by:

- (1) political subdivisions; and
- (2) their agencies;

regardless of whether it is performed on property owned or leased by the political subdivision or agency.

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility, maintains, extends, and installs services of the utility if the necessary work is done by the employees of the utility.

(c) This chapter does not apply to hospitals organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a ~~school corporation~~ **political subdivision or its agencies** may do the following:

(1) **Enter into a design-build contract as permitted under IC 5-30.**

(2) Participate in a utility efficiency program or may enter into a guaranteed savings contract as permitted under IC 36-1-12.5.

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 5-23.

SECTION 3. IC 36-1-12.5-1, AS AMENDED BY P.L.168-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) As used in this chapter, "conservation measure":

(1) means:

- (A) a ~~school~~ facility alteration;
 - (B) an alteration of a structure (as defined in IC 36-1-10-2);
 - (C) a technology upgrade; or
 - (D) with respect to an installation described in subdivision (2)(G) or (2)(H), an alteration of a structure or system;
- designed to provide billable revenue increases or reduce energy

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or water consumption costs, wastewater costs, or other operating costs; and

(2) includes the following:

(A) Providing insulation of the ~~school~~ facility or structure and systems in the ~~school~~ facility or structure.

(B) Installing or providing for window and door systems, including:

(i) storm windows and storm doors;

(ii) caulking or weatherstripping;

(iii) multi-glazed windows and doors;

(iv) heat absorbing or heat reflective glazed and coated windows and doors;

(v) additional glazing;

(vi) the reduction in glass area; and

(vii) other modifications that reduce energy consumption.

(C) Installing automatic energy control systems.

(D) Modifying or replacing heating, ventilating, or air conditioning systems.

(E) Unless an increase in illumination is necessary to conform to Indiana laws or rules or local ordinances, modifying or replacing lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility or structure.

(F) Providing for other conservation measures that provide billable revenue increases or reduce energy or water consumption, reduce operating costs, or reduce wastewater costs, including future:

(i) labor costs;

(ii) costs or revenues for contracted services; and

(iii) related capital expenditures.

(G) Installing equipment upgrades that improve accuracy of billable revenue generating systems.

(H) Installing automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs.

(b) The term does not include an alteration of a water or wastewater structure or system that increases the capacity of the structure or system.

SECTION 4. IC 36-1-12.5-5, AS AMENDED BY P.L.168-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The governing body may enter into an agreement with a public utility to participate in a utility efficiency program or enter into a guaranteed savings contract with a qualified

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provider to increase the political subdivision's billable revenues or reduce the school corporation's or the political subdivision's energy or water consumption, wastewater usage costs, or operating costs if, after review of the report described in section 6 of this chapter, the governing body finds:

(1) in the case of conservation measures other than those that are part of a project related to the alteration of a water or wastewater structure or system, that the amount the governing body would spend on the conservation measures under the contract and that are recommended in the report is not likely to exceed the amount to be saved in energy consumption costs and other operating costs over ~~ten (10)~~ **twenty (20)** years from the date of installation if the recommendations in the report were followed;

(2) in the case of conservation measures that are part of a project related to the alteration of a water or wastewater structure or system, that the amount the governing body would spend on the conservation measures under the contract and that are recommended in the report is not likely to exceed the amount of increased billable revenues or the amount to be saved in energy and water consumption costs, wastewater usage costs, and other operating costs over ~~fifteen (15)~~ **twenty (20)** years from the date of installation if the recommendations in the report were followed; and

(3) in the case of a guaranteed savings contract, the qualified provider provides a written guarantee as described in subsection (d)(3).

(b) Before entering into an agreement to participate in a utility efficiency program or a guaranteed savings contract under this section, the governing body must publish notice under subsection (c) indicating:

(1) that the governing body is requesting public utilities or qualified providers to propose conservation measures through:

(A) a utility efficiency program; or

(B) a guaranteed savings contract; and

(2) the date, the time, and the place where proposals must be received.

(c) The notice required by subsection (b) must:

(1) be published in two (2) newspapers of general circulation in the county where the school corporation or the political subdivision is located;

(2) be published two (2) times with at least one (1) week between publications and with the second publication made at least thirty

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(30) days before the date by which proposals must be received;
and

(3) meet the requirements of IC 5-3-1-1.

(d) An agreement to participate in a utility efficiency program or guaranteed savings contract under this section must provide that:

(1) in the case of conservation measures other than those that are part of a project related to the alteration of a water or wastewater structure or system, all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of ~~ten (10)~~ **twenty (20)** years or the average life of the conservation measures installed from the date of final installation;

(2) in the case of conservation measures that are part of a project related to the alteration of a water or wastewater structure or system, all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of ~~fifteen (15)~~ **twenty (20)** years or the average life of the conservation measures installed from the date of final installation;

(3) in the case of the guaranteed savings contract:

(A) the:

(i) savings in energy and water consumption costs, wastewater usage costs, and other operating costs; and

(ii) increase in billable revenues;

due to the conservation measures are guaranteed to cover the costs of the payments for the measures; and

(B) the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings; and

(4) payments are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(e) An agreement or a contract under this chapter is subject to IC 5-16-7.

SECTION 5. IC 36-1-12.5-7, AS AMENDED BY P.L.168-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) If the governing body enters into an installment payment contract for the purchase and installation of

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conservation measures under this chapter that are part of a project that is not related to the alteration of a water or wastewater structure or system, the balance of the payments must be paid in installments not to exceed the lesser of ~~ten (10)~~ **twenty (20)** years or the average life of the conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(b) If the governing body enters into an installment payment contract for the purchase and installation of conservation measures under this chapter that are part of a project that is related to the alteration of a water or wastewater structure or system, the balance of the payments must be paid in installments not to exceed the lesser of ~~fifteen (15)~~ **twenty (20)** years or the average life of the conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(c) With respect to a conservation measure described in section 1(a)(2)(G) or 1(a)(2)(H) of this chapter, annual revenues or savings from a guaranteed savings contract may be less than annual payments on the contract if during the length of the contract total savings and increased billable revenues occur as provided for by the contract.

(d) The financing of a guaranteed savings contract may be provided by:

- (1) the vendor under the guaranteed savings contract; or
- (2) a third party financial institution or company.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Technology, to which was referred Senate Bill No. 451, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 2. IC 36-1-12-1, AS AMENDED BY P.L.168-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in this section, this chapter applies to all public work performed or contracted for by:

- (1) political subdivisions; and
- (2) their agencies;

regardless of whether it is performed on property owned or leased by the political subdivision or agency.

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility, maintains, extends, and installs services of the utility if the necessary work is done by the employees of the utility.

(c) This chapter does not apply to hospitals organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a ~~school corporation~~ **political subdivision or its agencies** may do the following:

(1) Enter into a design-build contract as permitted under IC 5-30.

(2) Participate in a utility efficiency program or may enter into a guaranteed savings contract as permitted under IC 36-1-12.5.

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 5-23.

SECTION 3. IC 36-1-12.5-1, AS AMENDED BY P.L.168-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) As used in this chapter, "conservation measure":

(1) means:

- (A) a ~~school~~ facility alteration;
- (B) an alteration of a structure (as defined in IC 36-1-10-2);

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(C) a technology upgrade; or
 (D) with respect to an installation described in subdivision (2)(G) or (2)(H), an alteration of a structure or system; designed to provide billable revenue increases or reduce energy or water consumption costs, wastewater costs, or other operating costs; and

(2) includes the following:

(A) Providing insulation of the ~~school~~ facility or structure and systems in the ~~school~~ facility or structure.

(B) Installing or providing for window and door systems, including:

- (i) storm windows and storm doors;
- (ii) caulking or weatherstripping;
- (iii) multi-glazed windows and doors;
- (iv) heat absorbing or heat reflective glazed and coated windows and doors;
- (v) additional glazing;
- (vi) the reduction in glass area; and
- (vii) other modifications that reduce energy consumption.

(C) Installing automatic energy control systems.

(D) Modifying or replacing heating, ventilating, or air conditioning systems.

(E) Unless an increase in illumination is necessary to conform to Indiana laws or rules or local ordinances, modifying or replacing lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility or structure.

(F) Providing for other conservation measures that provide billable revenue increases or reduce energy or water consumption, reduce operating costs, or reduce wastewater costs, including future:

- (i) labor costs;
- (ii) costs or revenues for contracted services; and
- (iii) related capital expenditures.

(G) Installing equipment upgrades that improve accuracy of billable revenue generating systems.

(H) Installing automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs.

(b) The term does not include an alteration of a water or wastewater structure or system that increases the capacity of the structure or system."

Page 4, after line 4, begin a new paragraph and insert:

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"SECTION 5. IC 36-1-12.5-7, AS AMENDED BY P.L.168-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) If the governing body enters into an installment payment contract for the purchase and installation of conservation measures under this chapter that are part of a project that is not related to the alteration of a water or wastewater structure or system, the balance of the payments must be paid in installments not to exceed the lesser of ~~ten (10)~~ **twenty (20)** years or the average life of the conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(b) If the governing body enters into an installment payment contract for the purchase and installation of conservation measures under this chapter that are part of a project that is related to the alteration of a water or wastewater structure or system, the balance of the payments must be paid in installments not to exceed the lesser of ~~fifteen (15)~~ **twenty (20)** years or the average life of the conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(c) With respect to a conservation measure described in section 1(a)(2)(G) or 1(a)(2)(H) of this chapter, annual revenues or savings from a guaranteed savings contract may be less than annual payments on the contract if during the length of the contract total savings and increased billable revenues occur as provided for by the contract.

(d) The financing of a guaranteed savings contract may be provided by:

- (1) the vendor under the guaranteed savings contract; or
- (2) a third party financial institution or company."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 451 as introduced.)

MERRITT, Chairperson

Committee Vote: Yeas 11, Nays 0.

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